

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 5, 2001 Session

**LANNIE L. SUMMERS, ET AL. v. THE TOWN OF WALNUT GROVE,
TENNESSEE, ET AL.**

**Appeal from the Circuit Court for Sumner County
No. 20440-C Arthur E. McClellan, Judge**

No. M2000-02430-COA-R3-CV - Filed April 30, 2001

The Town of Walnut Grove was created pursuant to Tennessee Code Annotated § 6-58-108(f)(3). Its legality was challenged in an action filed by a neighboring town, and the statutory scheme was upheld. This judgment was not appealed. About one year later this statute was declared unconstitutional in *Huntsville v. Duncan* 15 S.W.3d 468 (Tenn. App. 1999). In the case at Bar, the trial judge applied *stare decisis* and dissolved the Charter of Walnut Grove. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court of Sumner County
Affirmed**

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. and D. MICHAEL SWINEY, JJ., joined.

James R. Tomkins, Nashville, Tennessee, for appellant, The Town of Walnut Grove, Tennessee.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General and Ann Louise Vix, Senior Counsel, for the State of Tennessee.

John R. Bradley, Portland, Tennessee, for the appellee, Lannie L. Summers and Fredrick H. Mueller.

OPINION

Walnut Grove was incorporated in 1998 in accordance with the statutory scheme in Tenn. Code Ann. § 6-58-108(f)(3). A neighboring town, White House, filed an action contesting the constitutionality of the enabling statute, which resulted in a judgment that the statute was constitutional. This judgment was not appealed.

Thereafter, in *Town of Huntsville v. Duncan*, 15 S.W.3d 468 (Tenn. App. 1999) the enabling statute was declared unconstitutional.

In the case at Bar, the complaint was filed by two residents of Walnut Grove who sought a declaratory judgment that the enabling statute, Tenn. Code Ann. § 6-58-108(f)(3) is unconstitutional as it pertains to Walnut Grove. The plaintiffs also sought a judicial dissolution of the Town of Walnut Grove, together with an injunction against the collection of taxes.

Walnut Grove raised four defenses to the complaint: (1) that the plaintiffs have no standing to question the validity of the incorporation of Walnut Grove; (2) that the doctrine of collateral estoppel bars the plaintiff from pursuing this action; (3) that the action is barred by the ten-day statute of limitations prescribed by Tenn. Code Ann. § 2-17-105; (4) that the enabling statute is constitutional.

Each party filed a motion for summary judgment, alleging that the issue was one of law and that there was no contested issue of a material fact. The motion of the plaintiff was granted. A judgment was entered that Tenn. Code Ann. § 6-58-108(f)(3) is unconstitutional, as previously held in *Town of Huntsville v. Duncan*, 15 S.W.3d 468. (Tenn. App. 1999). The Charter of Walnut Grove was judicially dissolved and the town was permanently enjoined from performing municipal functions, including the collection of taxes.

Walnut Grove appeals and presents for review those issues raised and relied upon in its answer:

1. Whether the plaintiffs have standing to bring this action
2. Whether this action is barred by collateral estoppel
3. Whether this action is barred by Tenn. Code Ann. § 2-17-105.
4. Whether Tenn. Code Ann. § 6-58-108(f)(3) is constitutional.

Appellate review is *de novo* on the record with no presumption of correctness of the judgment. *Hembree v. State*, 925 S.W.2d 513 (Tenn. 1996).

Discussion

I.

The trial court ruled that the plaintiffs have standing to bring this action because they are citizens and taxpayers of Walnut Grove.

Appellant (Walnut Grove) argues that private citizens may not challenge the corporate existence of a municipality, citing *Corporation of Collierville v. Fayette County Election Commission, et al.*, 539 S.W.2d 334, 336 (Tenn. 1976) and *City of Fairview v. Spears*, 359 S.W.2d 824 (Tenn. 1962).

These cases are distinguishable because, in the case at Bar, the enabling statute was declared invalid before the litigation was commenced. Walnut Grove had no statutory basis for its existence, and thus in legal contemplation could not exist. As stated by the Supreme Court in *Collierville, supra*, “the Legislature is in complete control of the creation of cities” and it follows that their continued existence is dependant upon enabling enactments. We find no authority for a *de facto* city.

The plaintiffs are residents of the area known as Walnut Grove and liable for payment of municipal taxes if the town continues to exist. They sought a declaratory judgment that the Charter of Walnut Grove was invalid; we think they had a vested right to question the legal existence of the town.

II.

The trial court ruled that the plaintiffs were not collaterally estopped to file this action because the previous lawsuit involved different parties. *See, Hampton v. Tennessee Truck Sales, Inc*, 993 S.W.2d 643 (Tenn.1999). Neither Walnut Grove nor the plaintiffs were parties to the prior action and so far as the record reveals had no fair opportunity to litigate the issue of the validity of the Charter of Walnut Grove.

III.

The trial court held that Tenn. Code Ann. § 2-12-105 is applicable to election contests, and not to actions for declaratory judgment. This appears to be settled law. *See, Dehoff v. Attorney General*, 564 S.W.2d 351 (Tenn. 1978).

IV.

The issue of the constitutionality of Tenn. Code Ann. § 6-58-108(f)(3) need not be further noticed. *Huntsville, supra*.¹

The judgment is affirmed at the costs of the appellant.

WILLIAM H. INMAN, SENIOR JUDGE

¹ The Attorney-General concedes the correctness of the judgment in light of *Huntsville, supra*.